

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
Case No. 2:06-CV-49-F**

BLACKWATER SECURITY)
CONSULTING, LLC, a Delaware Limited)
Liability Company; BLACKWATER)
LODGE AND TRAINING CENTER, INC.,)
a Delaware Corporation,)
Petitioners,)
v.)
RICHARD P. NORDAN,)
as Ancillary Administrator for the separate)
Estates of WESLEY J.K. BATALONA,)
JERKO ZOVKO, MIKE R. TEAGUE, and)
STEPHEN S. HELVENSTON,)
Respondent.)

)

**WITHDRAWAL OF
MOTION TO STAY ORDER
DIRECTING ARBITRATION**

Petitioners Blackwater Security Consulting, LLC, and Blackwater Lodge and Training Center, Inc. (collectively, "Blackwater") hereby withdraw their Motion to Stay Order Directing Arbitration [DE-45] in light of recent developments.

On October 21, 2009, the arbitrators issued a Suspension Order in the arbitration proceeding [DE-88-2]. As the Order explains, pursuant to Article 33 of the International Arbitration Rules, the arbitration proceeding has been suspended due to non-payment of the arbitrators' expenses. If those expenses are not paid within three months, the arbitrators may terminate the proceedings.

The Suspension Order arises from an issue raised with the Court in connection with Blackwater's Motion to Stay, namely, Respondent's persistent refusal to advance his share of the arbitrators' expenses. Respondent, despite the obligations imposed by contract and by order of

the Court compelling arbitration, has refused to pay a dime of the arbitrators' expenses for nearly three years. Blackwater, meanwhile, was for nearly two years paying both its share and Respondent's share of the arbitrators' expenses. Blackwater ultimately determined not to pay anything additional unless and until Respondent covers the advances made by Blackwater on his behalf and begins making his required share of the payments to the arbitrators going forward. The Suspension Order is the arbitrators' response to this situation.

As a result of the Suspension Order, there is no current need for a stay order from the Court. The arbitrators' grounds for issuing the Suspension Order do not, however, track the grounds set forth by Blackwater in support of its Motion to Stay. Specifically, while the Suspension Order was based entirely on issues of fee payment, Blackwater's Motion to Stay was based first and foremost on the position that the issue of immunity under the Defense Base Act, 42 U.S.C. § 1651 *et seq.*, has been delegated by statute exclusively to the Department of Labor followed by the appeal process contained in the Act, as previously recognized in opinions by this Court and the Fourth Circuit in this case. Accordingly, this motion to withdraw is without prejudice to Blackwater's right to renew its Motion to Stay in the event that the Suspension Order is lifted.

WHEREFORE, Blackwater withdraws its Motion to Stay Order Directing Arbitration [DE-45], without prejudice to its right to renew the motion if the arbitration resumes.

This the 22nd day of October, 2009.

SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.

By: /s/ Kirk G. Warner
Kirk G. Warner
North Carolina State Bar No. 16238
Mark A. Ash
North Carolina State Bar No. 13967
Post Office Box 2611
Raleigh, North Carolina 27602
Telephone: (919) 821-1220
Facsimile: (919) 821-6700
E-Mails: kwarner@smithlaw.com
mash@smithlaw.com

McDERMOTT WILL & EMERY LLP

Michael P. Socarras
DC Bar No. 418127
600 13th Street NW
Washington, DC 20005
Telephone: (202) 756-8000
Facsimile: (202) 756-8087
E-Mail: msocarras@mwe.com

Counsel for Petitioners Blackwater Security Consulting, LLC and Blackwater Lodge and Training Center, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system. Notification of such filing was given, as indicated below, by the CM/ECF system:

David F. Kirby
William B. Bystrinski
Kirby & Holt, LLP
3201 Glenwood Avenue
Suite 100
Raleigh, North Carolina 27612
dkirby@kirby-holt.com
bbystrinski@kirby-holt.com

Daniel J. Callahan
Marc P. Miles
Callahan & Blaine, APLC
3 Hutton Centre Drive
Suite 900
Santa Ana, California 92707
mmiles@callahan-law.com

This 22nd day of October, 2009.

SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.

By: /s/ Kirk G. Warner
Kirk G. Warner
North Carolina State Bar No. 16238
Mark A. Ash
North Carolina State Bar No. 13967
Post Office Box 2611
Raleigh, North Carolina 27602
Telephone: (919) 821-1220
Facsimile: (919) 821-6700
E-Mails: kwarner@smithlaw.com
mash@smithlaw.com